Cambridge International A Level

Cambridge International Examinations
Cambridge International Advanced Level

LAW **9084/41**

Paper 4 Law of Tort **October/November 2014**

1 hour 30 minutes

Additional Materials: Answer Booklet/Paper

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READ THESE INSTRUCTIONS FIRST

If you have been given an Answer Booklet, follow the instructions on the front cover of the Booklet.
Write your Centre number, candidate number and name on all the work you hand in.
Write in dark blue or black pen.
Do not use staples, paper clips, glue or correction fluid.

Answer **one** question from **Section A**, **one** from **Section B** and **one other**, thus making a total of **three** responses required.

At the end of the examination, fasten all your work securely together.
The number of marks is given in brackets [ ] at the end of each question or part question.

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Answer **three** questions, at least **one** of which must be from Section A and **one** from Section B.

Section A

1 The distinction drawn between the primary and secondary victims suffering nervous shock as a consequence of negligence is unnecessary and unfair.

Explain the distinction between the two types of victim and assess the validity of this statement. [25]

2 People are responsible for the consequences of their carelessness towards others.

Examine the development and application of the remoteness of damage principle through case law. Discuss the extent to which you agree with this statement. [25]

3 Contributory negligence and *volenti non fit injuria* are so similar in nature and effect that it is unnecessary for both defences to exist.

Critically analyse the defences and discuss the extent to which you agree with this statement. [25]

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Section B

4 Kennedy suffers from serious back problems and, having paid a visit to his local hospital, he is advised by Nicholls, a consultant surgeon, that it will require corrective surgery. He decides to undergo the operation.

As a consequence of the operation carried out by Nicholls, Kennedy suffers paralysis in both legs and is unable to walk again; he consequently loses his job as a lorry driver which is his only source of income.

Kennedy later discovers that paralysis was a known, slight risk with such operations to the back. He claims that Nicholls should have told him about the risk before he decided to undergo the surgery.

Assess Nicholls' potential liability in tort for the losses sustained by Kennedy. [25]

5 Petra builds a house on land that she owns. It is next to a lake which is used for recreational purposes. Petra is aware that the lake is used by the Quasar Water- and Jet-Ski Club (QC), but she believes that she will not be disturbed by the boats using the lake once she moves into the completed house.

By the time the house is finished, QC's activities have increased. The club now uses the lake on a daily basis, often up until ten o'clock at night. It has also started to use more powerful and noisier boats and jet-skis. Petra claims that these activities cause her severe headaches on a regular basis and she is unable to enjoy her garden at weekends. Petra has spoken to QC several times about the effects of the noise now that she lives in the new house, but her complaints have not been acted upon by the club.

Assess QC's liability towards Petra in the tort of private nuisance and consider any remedies that might be awarded against it should she decide to sue the club. [25]

6 While her children are at school, Sukhwinder visits the local nature reserve which is owned by Newtown Council. It is a very warm day and Sukhwinder decides to go for a swim in the ornamental pond located in the nature reserve. The Council has erected signs around it saying that swimming is prohibited and has planted lots of bushes around the water's edge to make access difficult. Sukhwinder injures her head and neck badly when she dives into the shallow water.

Assess the Council's potential liability under the Occupier's Liability Acts 1957 and 1984 for Sukhwinder's injuries. Analyse whether or not any action that she might bring could be successfully defended. [25]

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